IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2960 OF 2005
WITH
WRIT PETITION NO.6101 OF 2004
AND
WRIT PETITION NO.6102 OF 2004

W.P. No.2960/05:

Vijay Dattatraya Raut & Anr. ...Petitioners.
Vs.
Vaduj Shikshan Vikas Mandal & Ors. ...Respondents.
....
Mr. Sanjeev P. Kadam for the Petitioners.
Mr. R. D. Rane, GP with Mr. P.I. Khemani, AGP for Respondent Nos.2 and 3.
Mr.S. S. Pakale for Respondent No.5.
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W. P. No.6101/04 :

Smt. Sudha H. Kale. ... Petitioner.
Vs.
The State of Maharashtra & Ors. ...Respondents.
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W. P. No.6102/04 :
Shri Jalinder T. Dhulap. ...Petitioner.
Vs.
The State of Maharashtra & Ors. ...Respondents.
.....
Mr. S.S. Pakale for the Petitioners.
Mr. R.D. Rane, GP with Mr. P.I. Khemani, AGP for Respondent Nos.1 and 5.
.....
CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

June 13, 2005.

P.C.:

Since the issues which arise in these three petitions are connected and the disputing parties are common, we have, with the consent of Counsel, heard the three petitions together. With the consent of all the parties, and at their request, the petitions have been heard together at the stage of admission and are being disposed of by this judgment.

2. The Petitioners before the Court in Writ Petition 2960 of 2005 are qualified Assistant Teachers in the employment of the First Respondent at Satara. Both the Petitioners belong to the OBC category. On 3rd July 2001, the First Respondent published an advertisement calling for applications for the appointment of Shikshan Sevaks for teaching the subjects of Marathi and Science in the School and Junior College at Vaduj. The Petitioners applied in pursuance of the advertisement, were interviewed and came to be appointed on 27th July 2001. The term of appointment was from 28th July 2001 to 30th April 2004 and under the relevant Rules

governing the service of Shikshan Sevaks, the Petitioners were eligible for regular appointment upon the satisfactory completion of a period of three years' service as Shikshan Sevak. On 3rd September 2001, the services of the Petitioners came to be terminated, against which, they moved the Grievance Committee. The appeals filed by the Petitioners were allowed on 12th September 2004. The orders of termination were set aside and the management was directed to reinstate the Petitioners in service with full back wages. On 21st April 2003, the First Respondent applied for the grant of approval for the appointment of both the Petitioners and the Education Officer (Secondary) in the Zilla Parishad at Satara granted his approval to the Petitioners in the B.Ed. scale. On 27th July 2004, the management issued orders conferring upon the Petitioners, permanency as Assistant Teachers in the pay scale of Rs.5500-9000 with effect from 28th July 2004. The First Respondent then sent a proposal to the Education Officer for the grant of approval to the Petitioners in the post of Assistant Teachers.

3. The Fourth and Fifth Respondents to W.P. 2960 of 2003 are the Petitioners before the Court in the two companion petitions (Writ Petitions 6101/04 and 6102/04). Both these Respondents had been appointed as Assistant Teachers. They were aggrieved by the fact that they had not been granted the B.Ed. Scale. Two Writ Petitions under Article 226 of the Constitution were filed in this Court by the Fourth and Fifth Respondents, (Writ Petitions 6918/02 and 6932/02). These petitions were disposed of by a Division Bench of this Court on 1st July 2003, by directing the Education Officer (Secondary) to consider their prayer for the grant of the B.Ed. scale and to dispose of their claims after furnishing an opportunity of being heard. The Education Officer passed an order dated 24th May 2004 holding that there was no vacant post in the B.Ed. scale in the institution. However, the Education Officer directed that in the event that any post fell vacant in future, the claim of the aforesaid two teachers would be allowed by the grant of the B.Ed. scale. The Fourth and Fifth Respondents here thereupon filed two petitions in this Court (Writ Petitions 6101/04 and 6102/04) in order to challenge the decision

of the Education Officer.

4. The grievance of the Petitioners arises out of the fact that on 23rd September 2004, the Education Officer (Secondary) informed the Headmaster of the Institution that the claim of the Petitioners for the grant of an appropriate pay scale could not be considered in view of the pendency of the aforesaid Writ Petitions filed by the Fourth and Fifth Respondents.

5. The submission which has been urged on behalf of the Petitioners is that since July 2004, the grant of the requisite pay scale to them has remained pending and that they have not received any salary from the First and Second Respondents despite having discharged their duties. According to the Petitioners, they were entitled to permanency in service upon the satisfactory completion of three years' of service as Shikshan Sevaks and this has no connection with the pending petitions filed by the Fourth and Fifth Respondents. The Petitioners submit that their appointment was in the B.Ed. scale right from the inception

and they have consequently become eligible for being appointed as Assistant Teachers in the B.Ed. scale. It has been urged that in the circumstances, there being no dispute about the grant of the status of permanent Assistant Teachers to the Petitioners, the Education Officer was not justified in declining to grant his approval.

6. An affidavit in reply has been filed by the Education Officer (Secondary), Zilla Parishad, Satara, in the two companion petitions, namely, Writ Petitions 6101/04 and 6102/04. In the affidavit in reply, it has been stated that detailed guidelines have been issued by the Directorate of Education on 15th July 1991 which have been followed by a Government Resolution dated 25th June 1992, both of which govern the issue of upgradation of scale. In so far as it is material, the Government Resolution dated 25th June 1992 provides that a trained graduate teacher who works on a D.Ed. post, will not be entitled to the B.Ed. scale.

7. In our view, having regard to the affidavit in reply which

has been filed on behalf of the Education Officer, and particularly in view of the guidelines dated 15th July 1991 and the Government Resolution dated 25th June 1992, there is no merit in the case which has been sought to be urged on behalf of the Fourth and Fifth Respondents. The Petitioners were appointed in the B.Ed. scale right from the inception. They have completed the requisite period of three years' service upon which they were entitled to the conferment of the status of permanency. The appointment of the Petitioners in the B.Ed. Scale was duly approved by the Education Officer (Secondary) of the Zilla Parishad. In these circumstances, the authorities were clearly not justified in declining to determine the appropriate pay scale and to grant to the Petitioners their entitlement merely on the ground of the pendency of the petitions which were filed by the Fourth and Fifth Respondents.

8. In these circumstances, Writ Petition No.2960 of 2005 is allowed and the Second Respondent is directed to grant approval to the Petitioners in the post of Assistant Teachers in the B.Ed. scale. The Petitioner will be entitled to all consequential benefits.

In so far as Writ Petitions 6101/04 an 6102/04 are concerned, the case of the Petitioners therein, shall be considered by the Education Officer (Secondary), Zilla Parishad, Satara as and when a vacancy arises in future. The petitions shall accordingly stand disposed of in these terms. In the facts and circumstances of the case, there shall be no order as to costs.

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